IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Brij Mohan & ors. Versus State of Rajasthan.

S.B. Criminal Misc. Petition No.872/2006
against the order dated 2-9-2005 passed
by the Additional Chief Judicial Magistrarte,
Nohar, district Hanumangar, in Criminal
Case No. 394/2005.

...

Date of Order: November 28, 2006

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr. G.R. Goyal, for the petitioners.
Mr. Ashok Upadhyaya, Public Prosecutor for the State.

BY THE COURT:

This criminal miscellaneous petition under Section 482 of the Code of Criminal Procedure, 1973 (for short, "the Code" hereinafter) is directed against the order dated 2-9-2005 passed by the Additional Chief Judicial Magistrate, Nohar, district Hanumangarh (for short, "the trial Court" hereinafter) in Criminal Case No. 394/2005, whereby the trial Court took cognizance of the offence under Section 19 (a) of the Seeds Act, 1966 (for short, "the Act" hereinafter).

I have heard learned counsel for the petitioners and the Public Prosecutor for the State. Carefully gone through the order impugned passed by the trial Court.

It is contended by the learned counsel for the petitioners that the petitioners are the manufacturers and there being no penal provision for the manufacturer for violation of any of the provision of the Act, the impugned order is bad in law. It was further contended that at the time of taking the sample, there was only one attesting witness whereas sub-section (4) of Section 14 of the Act provides that where the Seed Inspector takes any action under clause (a) of sub-section (1) of Section 14, he shall, as far as possible, call not less than two persons to be present at the time when such action is taken and take their signatures on a memorandum to be prepared in the prescribed form and manner and, therefore, according to the learned counsel, the proceeding against the petitioners vitiates.

Learned Public Prosecutor has supported the impugned order and filed a detailed reply to the petition.

I have given my thoughtful consideration to the rival submissions made by the learned counsel for the parties.

The petitioners are the partners and carrying on business in the name and style of "M/s. Vishnu Seeds" and producing seeds and germination. The seeds produced by the petitioners, on sample being taken and analysed by the Chemical

Examiner, were found to be sub-standard and did not conform to the requisite germination and, therefore, according to the Public Prosecutor, the offence under Section 19 (a) of the Act is prima facie made out against the petitioners. It has not been disputed by the learned counsel for the petitioners that the samples of the seeds were taken from the petitioners and on being analysed, the same did not conform to the requisite percentage of germination. It was also pointed out that the bags from which the samples of seeds were taken, did not specify on every mark and label the name and address of the person who offers for sale, sells or otherwise supplies the seed and who is responsible for its quality and, therefore, as per the provisions of rule 8 (v) of the Seeds Rules, 1968, it is the producer who is responsible for its quality. Therefore, according to the learned Public Prosecutor, there is clear cut violation of provisions of the Act punishable under Section 19 (a) of the Act.

So far as contention of the learned counsel for the petitioners that at the time of taking the samples, there was only one attesting witness and as such the requirement of sub-section (4) of Section 14 of the Act has not been fulfilled, is concerned, a bare reading of Section 14 (4) of the Act makes it clear that the language used is "as far as possible, call not less than two persons" and, therefore, this cannot be said to be a mandatory provision, mandatorily requiring the Seed Inspector to take the

samples in the presence of two persons and obtain their signatures. More over, these are the questions to be decided at the time of final decision and it cannot be said at this stage as to how the right of the petitioners has been prejudiced.

Keeping in view the material available on record, the trial Court took cognizance of the offence against the petitioners. In my view, the impugned order taking cognizance cannot be said to be erroneous. It cannot be said that the order impugned would result in serious miscarriage of justice or abuse of process of the Court warranting interference in the inherent jurisdiction.

The criminal miscellaneous petition is, therefore, dismissed.

(H.R. PANWAR), J.

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